

**REMARKS**

The Examiner has objected to Claims 21, 30, 32, 35-37, and 38 because of various informalities. In addition, the Examiner has rejected Claims 20-22, 25-27, 29, and 31-39 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,847,827 to Fercher ("Fercher"). The Examiner has also rejected Claims 23, 24, 28, and 30 under 35 U.S.C. § 103(a) as being unpatentable over Fercher in view of International Patent Application Publication No. WO 02/04884 to Knuttel ("Knuttel").

Claim 20 is currently amended to include the language of Claims 21, and Claim 21 is canceled. Claims 22-39 also stand currently amended. Claims 1-19 stand previously canceled. Claims 20 and 22-39 are currently pending. The following remarks are considered by applicant to overcome each of the Examiner's outstanding rejections to current Claims 20 and 22-39. An early Notice of Allowance is therefore requested.

**I. SUMMARY OF RELEVANT LAW**

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. The determination of obviousness rests on whether the claimed invention as a whole would have been obvious to a person of ordinary skill in the art at the time the invention was made. In determining obviousness, four factors should be weighed: (1) the scope and content of the prior art, (2) the differences between the art and the claims at issue, (3) the level of ordinary skill in the art, and (4) whatever objective evidence may be present. Obviousness may not be established using hindsight or in view of the teachings or suggestions of the inventor. The Examiner carries the burden under 35 U.S.C. § 103 to establish a prima facie case of obviousness and must show that the references relied on teach or suggest all of the limitations of the claims.

**II. OBJECTION TO CLAIMS 20, 30, 32, 35-37, AND 38 BECAUSE OF VARIOUS INFORMALITIES**

On page 2 of the current Office Action, the Examiner objects to Claims 20 (incorporating the language of Claim 21), 30, 32, 35-37, and 38 because of various

informalities. These objections are respectfully traversed and believed overcome in view of the following discussion.

**A. Claim 20 (incorporating the language of Claim 21)**

As sated above, Claim 20 has been amended to include the language of Claim 21, and Claim 21 has been canceled. In addition, the language from Claim 21 which was added to Claim 20 was modified so as to address the concerns of the Examiner. Accordingly, Applicant respectfully asserts that Claim 20 is now in acceptable form. Therefore, Applicant respectfully requests Examiner withdraw the objection to Claim 20 because of various informalities.

**B. Claim 30**

Claim 30 stands currently amended to address the concerns of the Examiner. Namely, Claim 30 now refers to “a reference beam path”. Accordingly, Applicant respectfully asserts that Claim 30 is now in acceptable form. Therefore, Applicant respectfully requests Examiner withdraw the objection to Claim 30 because of various informalities.

**C. Claims 32 and 35-37**

Claim 32 stands currently amended to address the concerns of the Examiner. Accordingly, Applicant respectfully asserts that Claim 32 is now in acceptable form. Therefore, Applicant respectfully requests Examiner withdraw the objection to Claim 32 because of various informalities.

Claim 35 refers to the “reference beam” path and the “measurement beam” path. The reference beam and measurement beam were introduced in Claim 20, and all references and measurement beams **inherently** have a path. As such, referring to “the reference beam path” and “the measurement beam path” in Claim 35 is completely proper, and requires no amending.

Similarly to Claim 35, Claim 36 refers to the “reference beam” path. The reference beam was introduced in Claim 20, and all references beams **inherently** have a path. As such, referring to “the reference beam path” in Claim 36 is completely proper, and requires no amending.

Similarly to Claims 35 and 36, Claim 37 refers to the “reference beam” axis. and all references beams **inherently** have an axis. As such, referring to “the reference beam axis” in Claim 37 is completely proper, and requires no amending.

#### **D. Claim 38**

Claim 38 stands currently amended to address the concerns of the Examiner. Accordingly, Applicant respectfully asserts that Claim 38 is now in acceptable form. Therefore, Applicant respectfully requests Examiner withdraw the objection to Claim 38 because of various informalities.

### **III. REJECTION OF CLAIMS 20, 22, 25-27, 29, AND 31-39 UNDER 35 U.S.C. § 102(B) BASED ON FERCHER**

On page 2 of the current Office Action, the Examiner rejects Claims 20, 22, 25-27, 29, and 31-39 under 35 U.S.C. § 102(b) as being anticipated by Fercher. These rejections are respectfully traversed and believed overcome in view of the following discussion.

Amended, independent Claim 20 states, in part:

“wherein **at least one deflecting element moves to direct** the measurement beam or a reference beam **sequentially to a series of reflectors** arranged in a staggered manner with respect to depth and/or laterally.” (emphasis added).

As such, Claim 20 requires that the at least one deflecting element **itself directs** the measurement beam or a reference beam **to** a series of **reflectors**. Further, Claim 20 requires that the at least one deflecting element directs the measurement or reference beam **sequentially** to the series of reflectors. Examiner asserts that Fercher discloses these requirements of Claim 20. This, however, misinterprets the teachings of Fercher.

In particular, the light beam 2" is directed to the mirror 70 **by the splitter 4**, and **not** by the **mirror 24**, as asserted by the Examiner. Fercher, Col. 13, Lns. 53-55; Fig. 12. As such, Fercher fails to disclose that at least one deflecting element which **directs** a measurement beam or a reference beam sequentially **to a series of reflectors**, as stated in Claim 20.

Further, even if Fercher could somehow be interpreted as disclosing that the mirror 24 directs the light beam 2" to the mirror 70 (which Applicant disputes), the mirrors 70, 75 (not element 76 as cited by the Examiner (as 76 is a focus) or element 95 (as 95 is a beam splitter)) are part of the scanner, and are thus **always** in the light beam 2". As such, the mirrors 70, 75 do **not** have the light beam 2" **sequentially** directed to them by the mirror 24. In fact, the resulting **scanner** is used to scan the light beam over the sample, and is **not** able to solve the object of the invention (mirror scan distances less than the distance to be measured).

However, Claim 20 requires that the at least one deflecting element directs the measurement or reference beam **sequentially** to the series of reflectors. In other words, the at least one deflecting element directs the measurement or reference beam **firstly** to a first reflector and **not** to the remaining reflectors (including a second reflector), **then** the at least one deflecting element directs the measurement or reference beam **secondly** to a second reflector and **not** to the remaining reflectors (including the first reflector). An embodiment of such at least one deflecting element directs the measurement or reference beam **sequentially** to a series of reflectors can be seen in Figs. 5 and 6 of the current application, in which the light beam touches the mirrors 618 and 620 **sequentially** (i.e., one after another) as a result of the motion of the reflector 316 (the movement of the reflector 316 being shown by double arrow 560). As such, Fercher fails to disclose that at least one deflecting element moves to direct the measurement beam or a reference beam **sequentially** to a series of reflectors, as stated in Claim 20.

Moreover, Knuttel teaches only a deflecting element 8 and focusing optics 11 arranged one behind the other, and is not able to cure the deficiencies of Fercher.

Accordingly, Applicant respectfully asserts that Examiner has failed to establish a prima facie case of anticipation of independent Claim 20, and corresponding Claims 22, 25-27, 29, and 31-39 because they are each ultimately dependent from Claim 20. Therefore, Applicant respectfully requests that Examiner withdraw the rejection of Claims 23, 24, 28, and 30 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,847,827 to Fercher.

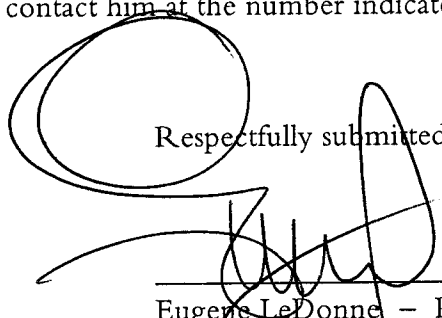
**IV. REJECTION OF CLAIMS 23, 24, 28, AND 30 UNDER 35 U.S.C. § 103(A)**  
**BASED ON FERCHER IN VIEW OF KNUTTEL**

On page 6 of the current Office Action, the Examiner rejects Claims 23, 24, 28, and 30 under 35 U.S.C. § 103(a) as being unpatentable over Fercher in view of Knuttel. These rejections are respectfully traversed and believed overcome in view of the following discussion.

Claims 23, 24, 28, and 30 are ultimately depend from independent Claim 20. As Claim 20 is allowable, so must be Claims 23, 24, 28, and 30. Accordingly, Applicant respectfully asserts that Examiner has failed to establish a prima facie case of obviousness of Claims 23, 24, 28, and 30. Therefore, Applicant respectfully requests that Examiner withdraw the rejection of Claims 23, 24, 28, and 30 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,847,827 to Fercher in view of International Patent Application Publication No. WO 02/04884 to Knuttel.

Based upon the above remarks, Applicant respectfully requests reconsideration of this application and its early allowance. Should the Examiner feel that a telephone conference with Applicant's attorney would expedite the prosecution of this application, the Examiner is urged to contact him at the number indicated below.

Respectfully submitted,



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